

Appendix F

**MEMORANDUM OF UNDERSTANDING
BETWEEN
U.S. DEPARTMENT OF THE ARMY
AND THE U.S. DEPARTMENT OF LABOR
EMPLOYMENT STANDARDS ADMINISTRATION
WAGE AND HOUR DIVISION
REGARDING USE OF
SERVICE CONTRACT ACT WAGE DETERMINATION
DATABASE BY MEANS OF NTIS FedWorld**

This memorandum defines the procedures to be used in implementing an interim pilot program that will permit designated contracting offices under defined conditions to select, download, and use Service Contract Act (SCA) wage determinations by means of the National Technical Information Service's (NTIS) FedWorld System.

INTRODUCTION

On October 26, 1993, President Clinton issued a Memorandum to the Heads of Executive Departments and Agencies directing Federal Departments and Agencies to undertake a number of actions designed to promote electronic commerce throughout the Federal Government. This Directive is predicated in large measure upon the Findings and Recommendations of the National Performance Review (NPR).

The NPR specifically outlines the expansion of electronic commerce through the Department of Labor's (DOL) application of information technology to expedite wage determinations for Federal service contracts. The NPR specifically recommended that DOL "develop an electronic data interchange/data mapping (EDI/DM) system and integrate it into the Service Contract Act wage determination process." Towards this objective, the DOL has undertaken initiatives to develop an electronic data interchange (EDI) data mapping system. The DOL's EDI system will be implemented by first utilizing the electronic mail capabilities of the Internet and later the government-wide Federal Acquisition Network (FACNET). The DOL and the Department of the Army agree that an EDI/DM system offers the most efficient and effective process for requesting and issuing SCA wage determinations, and the parties to this MOU are committed to the implementation of an EDI/DM system.

As a prelude to the full-scale implementation of an EDI SCA wage request process, an interagency task group was established to identify SCA performance needs. The task force recommended that the NTIS FedWorld system be used to provide access to SCA wage

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determinations as an interim measure while DOL's SCA EDI design and implementation planning proceeds. The parties to this MOU emphasize that this is **an interim** measure, and it is not intended to replace or in any way diminish commitment to the full scale implementation of the EP EDI/DM system.

Under the FedWorld procedures, the contracting agencies will be permitted to obtain SCA wage determinations for specific procurements as set forth below. The intent of this MOU is to authorize immediate access on the part of contracting agencies to "official" SCA wage determinations while simultaneously alleviating the demand upon DOL staff resources through a reduction in the number of individual SCA wage determination requests submitted to the Wage and Hour Division.

A committee, consisting of representatives from DOL and participating procurement agencies will monitor the implementation of this MOU. The committee will ascertain the extent to which the MOU promotes the following objectives: (1) protection of statutory labor standards; (2) issuance of more timely wage determinations; (3) proper implementation of these wage determinations by the parties to the agreement; and (4) reduced paperwork. Committee personnel may obtain data from contracting officers and DOL staff involved to facilitate procedural modifications. Data to be collected and analyzed may include, but not be limited to the number of NTIS-accessed wage determinations, the number of contracts covered by these requests, extent of coverage of contracts, and time and labor benefits for both the procurement agencies and the DOL. Agencies will train contracting officers in the use of NTIS-SCA access before the contracting officers may use such wage determinations in their procurements.

TERMS OF AGREEMENT

Eligibility to utilize NTIS-accessed wage determinations is to commence upon completion of the agency-designed and DOL-approved training plan. The agency training plan shall be submitted to DOL and cover each office that contemplates the use of NTIS-accessed wage determinations within their solicitations. The agency will certify its completion of NTIS-access training of contracting agency personnel to be involved, and establishment of a continuing training capability to account for normal staff turnover.

Participating agencies must continue to submit individual SF-98's for contracts involving the following situations:

- a. Solicitations where any service employees of a predecessor (incumbent) contractor was subject to a collective bargaining agreement (CBA), or where any service employees, although not covered by the CBA, were subject to the minimum rates and fringe benefits of a predecessor's contract pursuant to section 4(c) of the SCA.
- b. Any solicitation for which the FedWorld system does not contain an appropriate wage

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determination or for which the wage determinations omit a principal occupation to be employed on the contract.

Any solicitation for which there is any question regarding labor standards coverage, requesting offices should contact their agency labor advisor.

The Department of the Army, as a participating procurement agency will follow the procedures set forth below:

- a. The contracting office will obtain the appropriate SCA wage determination by accessing the NTIS SCA Database no more than 15 days prior to the issuance of solicitation (IFB or RFP), exercise of option, contract extension, or contract modification.
- b. The contracting office will forward a completed SF-98, **NOTICE OF INTENTION TO MAKE A SERVICE CONTRACT AND RESPONSE TO NOTICE** and SF-98a to the Administrator, Wage and Hour Division on or before the issuance of the solicitation. In addition to completing the usual sections of the SF-98, the contracting office will complete the **RESPONSE TO NOTICE** section of the form by listing the number, including the revision number, of all wage determinations included in the solicitation. A trained and authorized contracting agency representative will sign the Response section of the form. The SF-98 should be clearly annotated with the letters **MOU** on or near the Notice No. Section which appears on the upper right section of the SF-98. All sections of the SF-98 shall be completed fully and accurately. The agency-designed training will place particular emphasis on the accurate completion and submission of the SF-98.
- c. The contracting office will monitor the SCA Database to determine if an applicable wage determination has been revised. Wage determinations will be considered received by the Federal Agency on the date of their publication in the NTIS Database. The provisions of 29 CFR 4.5(a)(2) shall be followed to determine whether a revised wage determination must be included in the solicitation and subsequent contract. Thus,
 1. For contracts which are the result of sealed bidding procedures, revisions to the wage determination which are published in the NTIS SCA Database 10 or more days prior to bid opening shall be effective. Any revised wage determination which is published in the NTIS SCA Database less than 10 days prior to bid opening shall not be effective if the contracting office determines that there is not a reasonable time still available to notify bidders of the revision.
 2. For contracts which are the result of other than sealed bidding procedures, any revision to a wage determination which is published in the NTIS SCA

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to the date of award (or the date of a specified modification having the effect of a new award) shall be effective. Any revision to a wage determination that is in the NTIS SCA Database after the date of award shall not be effective provided that contract performance commences within 30 days of the award date. If contract performance commences more than 30 days after award (or the specified modification), any revised wage determination published in the NTIS SCA Database at least 10 days prior to commencement of the work shall be effective and applicable to the contract.

- d. If it is discovered that the most current, applicable wage determination (i.e., covering the appropriate locality, occupations, type of service and fringe benefit level for the service to be performed) contained in the NTIS SCA Database system was not included in the contract, the agency agrees to exercise any and all of its power to incorporate the applicable wage determination in the contract as provided by 29 CFR 4.5(c)(2), 4.101(b) and FAR 22.1015.

The DOL will ensure that the NTIS SCA Database is updated no less often than weekly.

Nothing in this memorandum of agreement shall be construed to alter any obligations or responsibilities of the parties under applicable statutes or regulations.

Either party to this agreement may terminate the agreement upon 30 days notice to the other party.

/s/

Ms. Maria Echaveste
Administrator
Wage and Hour Division

/s/

Kenneth J. Oscar
Deputy Assistant Secretary of the Army
(Procurement)